

VZCZCXRO6565

RR RUEHAG RUEHAST RUEHDA RUEHDF RUEHFL RUEHIK RUEHKW RUEHLA RUEHLN
RUEHLZ RUEHNP RUEHPOD RUEHROV RUEHRS RUEHSR RUEHVK RUEHYG
DE RUEHBS #1892/01 3501504
ZNR UUUUU ZZH
R 151504Z DEC 08
FM USEU BRUSSELS
TO RUEHC/SECSTATE WASHDC
INFO RUEHZL/EUROPEAN POLITICAL COLLECTIVE
RUEHGV/USMISSION GENEVA

UNCLAS SECTION 01 OF 02 BRUSSELS 001892

SIPDIS

E.O. 12958: N/A

TAGS: [PREL](#) [EUN](#) [EI](#)

SUBJECT: EU LEADERS SET PATH FOR NEW IRISH VOTE ON LISBON TREATY

REF: Brussels/USEU 1590

¶1. SUMMARY: Irish PM Brian Cowen at the December 11-12 European Council committed to put the Treaty of Lisbon to another referendum before the end of October 2009 in exchange for assurances on Irish concerns which motivated the "No" in June 2008. The leaders concurred that the Commission would continue to include one national per Member State and that other Irish concerns on taxation, social, and ethical issues as well as respect of the country's neutrality would be addressed "to the mutual satisfaction of Ireland and the other Member States." Legal technicalities of the deal will be completed by mid-2009 before the Irish government formally announces the re-run. If this path is successful, the Treaty of Lisbon will come into force by the end of 2009. END SUMMARY.

¶2. EU leaders in their December 11-12 European Council found a "path" for the Treaty of Lisbon to take effect "by the end of 2009." Under the understanding reached by Irish PM Brian Cowen and his fellow Heads of State and Government, another referendum on the Treaty will be held in Ireland before the end of the current Commission's term in office (end of October 2009). The re-run will take place in light of commitments by the European Council to address Irish concerns with EU reforms and "detailed follow-up work" to be completed by mid-2009. Ireland is constitutionally bound to ratify the Treaty by referendum. All but one of the other 26 EU Member States already approved the Treaty using the parliamentary route, with the exception of the Czech Republic (upcoming Presidency), where the Parliament is expected to pronounce early in ¶2009. EU Treaties can only enter into force when all Member States have formally deposited their instrument of ratification, which normally requires a couple of months after the last approval has been recorded.

¶3. PM Cowen's presentation and the ensuing deal in the European Council were based on recognition of concerns found by the Irish government to have led to the June 2008 rejection of the Treaty. Cowen told colleagues that while Ireland wanted to remain deeply involved with the EU, the concerns of his citizens needed to be addressed. The fear that Ireland might lose its right to nominate a Commissioner was crucial in this respect. Other concerns also needed to be taken on board through legal guarantees and assurances robust enough to withstand any domestic challenge.

ONE COMMISSIONER PER MEMBER STATE

¶4. The leaders consequently agreed: "Provided the Lisbon Treaty enters into force, a decision will be taken, in accordance with the necessary legal procedures, to the effect that the Commission should continue to include one national of each Member State." Under Lisbon, the Commission size would be reduced as from 2014, with only two-thirds of Member States being allowed to nominate a Commissioner. The current provisions, based on the Nice Treaty, require an earlier reduction in the Commission's size, to be applied to the Commission that will take over from the current Barroso team. The Benelux countries were reluctant to drop a reform they had sought and secured a few years ago (subject to agreement on the modalities) with the aim of preventing the Commission becoming

inefficient and enhancing the supranational character of the institution. However, they could not afford to block the deal cooked up by the French Presidency and the Irish. Speaking at his December 12 press conference, French President/European Council chair Sarkozy did not hesitate to call "an error" the decision by the Lisbon negotiators to deprive EU Member States from the responsibility to chair top-level EU meetings (by way of creating a new position of permanent President of the European Council), while asking them not to nominate a Commissioner. In Sarkozy's words: "That was too much."

FURTHER LEGAL GUARANTEES

¶5. The leaders also noted other concerns of the Irish people related to "taxation policy, family, social and ethical issues, and common security and defense policy with regard to Ireland's traditional policy of neutrality." The necessary legal guarantees will be these:

-- Ensuring that the Treaty of Lisbon provisions make no change of any kind to the extent or operation of the EU's competences in the area of taxation;

-- Ensuring that the Treaty of Lisbon does not affect the security and defense policy of the Member States, including Ireland's traditional policy of neutrality, nor the obligations of most other Member States;

-- Ensuring that the provisions of the Irish Constitution in relation to the right to life, education and the family the terms are not affected in any way by the binding character enshrined in the Lisbon Treaty will of the EU Charter of Fundamental Rights and

BRUSSELS 00001892 002 OF 002

the Treaty provisions concerning justice and home affairs.

¶6. President Sarkozy told his European Council final press conference the legal guarantees could be enshrined as a Protocol to the Accession Treaty that will be concluded with the 28th Member State (expected to be Croatia) and will have to be ratified by the EU-27 (through parliamentary vote). Both Sarkozy and Commission President Barroso expressed their belief that Irish voters will realize "how much they need the EU" (and its reforms) "just like the EU needs Ireland."

OTHER CONCERNS NOTED

¶7. A statement annexed to the Summit conclusions further lists the Irish concerns, including "Confirming that the Union attaches high importance to social progress and the protection of workers' rights; public services, as an indispensable instrument of social and regional cohesion; the responsibility of Member States for the delivery of education and health services; and the essential role of local government in providing commissioning and organizing non-economic services of general interest, which is not affected by any provisions of the Treaty of Lisbon, including those relating to the common commercial policy."

¶8. PM Brown had raised last-minute reservations on the legal nature of the guarantees to be provided to the Irish. EU sources said the UK was sensitive to anything that might introduce Treaty changes through the back door and provide ammunition to Brown's political opponents. The strictly delineated legal guarantees were therefore crafted to ensure that any legally binding protocol attached to future EU treaties does not impact on the national legal systems of other Member States, in particular concerning workers' rights. Brown assured domestic media that the assurances to be provided to the Irish do not "in any way" change the British "red lines" with Lisbon Treaty reforms. Sarkozy publicly paid tribute to Brown's "constructive attitude."

¶9. The Irish government reportedly also forced changes to the separate draft Declaration on European security and defense policy (ESDP), to have the UN's role highlighted. The Declaration, pledges

to give a "fresh impetus to European security and defense, in full complementarity with NATO. It also asserts the EU's "determination to continue its support for the UN and for the efforts made by regional security organizations, including the African Union, to promote international peace and security."

¶10. The leaders stated in a separate declaration that if Lisbon comes into force after a date when a six-monthly Presidency has already begun, the competent authorities of the Member State holding the six-monthly office the Presidency will continue to chair all the European Council (top-level) and Council (ministerial-level) as well as third-country meetings (Note: including the EU-US Summit) until the end of their six-month term. Provisions are also envisaged for the European Parliament to be elected in June 2009 (based on current Nice Treaty provisions implying a Parliament of 736 members) to increase "if possible during the year 2010" the total number of MEPs from 736 to 754 for the remainder of the legislative period. (Note: The adjustment will likely appease MEPs; some of them may have to wait only a couple of months to regain/take up seats won in June 2009.)

COMMENT

¶11. Though the agreed "path" may not be exempt from further legal challenges, the French Presidency managed to produce a best-case scenario. PM Cowen set out his concerns and received political understanding for his problems. In return, the Irish agreed to provide long-awaited clarification on the timeframe within which the Lisbon Treaty may be ratified. The Irish concern about "their" Commissioner resulted in a decision to come back on a reform that was part of a broader, overall compromise on EU institutional changes. Critics will say that those who created a problem will eventually be rewarded. President Barroso, who was instrumental in helping the French Presidency behind the scenes, will not be bothered. A large Commission suits his managerial style, which is based on strong presidential authority and limited leeway for his Commissioners in running the Brussels bureaucracy.

SILVERBERG